U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

L4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 27 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

[redacted]

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Service relating to the applicant's claim of employment for farm labor contracto[redacted]

On appeal, the applicant made reference to affidavits submitted in response to the notice of intent to deny which had not been incorporated into the record at the time the notice of decision was issued.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. 210.3(b).

On the Form I-700 application, the applicant claimed 102 man-days working with grapes for farm labor contractor [redacted] in Dinuba (Tulare County), California, from May 1985 to May 1986. In support of the claim, the applicant submitted a corresponding Form I-705 employment affidavit and a separate employment verification statement, both of which were purportedly signed by [redacted]

At the applicant's legalization interview, the interviewing officer noted that the applicant did not appear knowledgeable when asked about his purported duties working with grapes. According to that legalization interviewer's worksheet, Form I-696, the officer indicated that fraud was strongly suspected, and recommended denial of the application.

Subsequently, in attempting to verify the applicant's claimed employment, the Service acquired adverse information which contradicted the applicant's claim. Specifically, the Service acquired information which cast doubt on the credibility of the applicant's documentation. The signatures of the applicant's purported employer, Lucio Morales, on documents submitted in support of the application are visibly and significantly different from authentic exemplars obtained by the Service.

On August 29, 1991, the applicant was advised in writing of the adverse information obtained by the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) and of the Service's intent to deny the application. The applicant was granted thirty days to respond.

In his decision, the director stated that the applicant had not replied to the notice of intent to deny, concluded the applicant had not overcome the derogatory evidence and, on October 11, 1991, denied the application. However, the record contains documentation from the applicant in response to the notice of intent to deny which does not appear to have been incorporated into the record until after the decision had been rendered. This documentation will be duly considered herein.

The applicant responded to the notice of intent with a notarized letter dated September 19, 1991, which is attributed to [redacted] In that letter, the individual purporting to be [redacted] provided an address and phone number at which he could be contacted in order to resolve any questions regarding his true signature and his employment affidavit on behalf of the applicant. The applicant also submitted the following:

- an acquaintance affidavit from [redacted] who attested to the applicant having resided in Dinuba, California from May 1, 1985 to May 1, 1986; and

- an acquaintance affidavit from [redacted] who attested to the applicant having resided in Dinuba, California from May 1, 1985 to May 1, 1986. The affiant, [redacted] also attested to having visited the applicant frequently during this period at a camp belonging to [redacted]

These affidavits from acquaintances fail to specify the number of man-days worked by the applicant, the applicant's exact dates of employment, or the types of duties performed. Furthermore, the affiants fail to specify how they had direct, specific knowledge of the applicant's employment [simple acquaintance with the applicant is not sufficient to establish direct, personal knowledge of the applicant's employment]. Without this information, the affidavits provided by the applicant are of little or no probative or evidentiary value. As such, they fail to clarify or resolve the adverse evidence acquired by the Service.

On appeal, counsel for the applicant submits photocopies of the affidavits which had been submitted previously in response to the director's Notice of Intent to Deny.

On April 24, 2000, subsequent to the applicant's appeal, the AAO sent the applicant a communication indicating that *additional* adverse evidence existed in a prior Service file [redacted] pertaining to the applicant. This information directly contradicts the information included by the applicant on his I-700 application. Specifically, on September 10, 1987, the applicant completed a Biographic Information Form G-325A, in which he specified that his *only* employment in the U.S. during the preceding *five* years consisted of the following:

- clerk for Physician Management Services in North Hollywood, California, since September 1986; and

- manager at Econowash Laundry in North Hollywood, California, since March 1987.

Neither of these positions conform to qualifying agricultural field work fruits, vegetables or perishable commodities, as set forth in 7 C.F.R. § 1d.4. Nor is there reference on this form to the applicant having performed *any* agricultural employment during the period in question. In addition, the applicant claimed on his I-700 application to have resided in Dinuba, California during the May 1985 to May 1986 qualifying period. However, on his G-325A Biographic Information Form, he listed his residence during the *same* period as Monterey Park, California and Glendale Park, California, respectively. The applicant was granted 30 days in order to address and respond to this information.

In response to the AAO's communication, counsel for the applicant submitted a separate statement in which he asserted that the evidence included on the applicant's G-325A does not contradict that provided on his original I-700. No further evidence has been submitted into the record by the applicant or by counsel in response to the derogatory information communicated by the AAO.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

No specific type of documentation is required to sustain the applicant's burden of proof. However, the documentation must be credible. Documents which appear to have been forged, or otherwise deceitfully created or obtained, are not credible. *United Farm Workers (AFL-CIO) v. INS,* Civil No. S-87-1064-JFM (E.D. Cal.).

The discrepancy cited by the director in his Notice of Intent to Deny between the signatures of the applicant's purported employer [redacted] on the applicant's employment documents, and those included on the authentic exemplars obtained by the Service, is minimal. It does not appear that a definitive determination on this matter can be made without actual forensic analysis of the signatures.

Nevertheless, the assertions made by the applicant on his application Form I-700 and the information provided on his previously-completed Form G-325A are mutually contradictory; *they cannot both be true.* Counsel and the applicant were accorded the opportunity to review and rebut the derogatory information obtained by the AAO, but have failed to submit any additional evidence to address, rebut or to reconcile this contradictory information.

It should also be mentioned that the legalization officer who personally interviewed the applicant noted that, since the termination of the twelve-month SAW qualifying period, the applicant had worked steadily in the office of a physician, as opposed to having engaged in the performance of agricultural services. Furthermore, as previously noted, the interviewing officer's notes indicated that the applicant did not appear knowledgeable when asked about his purported duties working with grapes. The officer, finding the applicant to be less than credible, recommended denial of his application. This finding on the part of the interviewing officer further diminishes the credibility of the applicant's claim to have performed qualifying agricultural field work.

Under these circumstances, it is concluded that the applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.